

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOSEPH L. GENDREAU,

Plaintiff,

v.

THE CITY OF MERCER ISLAND,  
a municipal corporation,

and

ROBB KRAMP, in his  
capacity as a police officer for the City of  
Mercer Island, and as an individual,

Defendants.

No.:

COMPLAINT FOR DAMAGES

INTRODUCTION

1. This is a civil action seeking damages against the above-named defendants.

The civil claims include common law tort causes of action, statutory causes of action, and offenses committed under color of law resulting in a deprivation of rights secured by the

COMPLAINT FOR DAMAGES - 1

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1 Constitution and laws of the United States of America.

2  
3 JURISDICTION AND VENUE  
4

5 2. This Court has personal and subject matter jurisdiction over plaintiff's federal  
6 civil rights claims under Title 42, United States Code, § 1983, and Title 28, United States  
7 Code, §§ 1331 and 1343(a)(3).  
8

9 3. This Court has pendent jurisdiction over plaintiff's state law claims and over  
10 defendants as to said claims, pursuant to Title 28, United States Code, § 1367 (Judicial  
11 Improvements Act of 1990), Public Law No. 101-650, 104 Stat. 5089 (1990).  
12

13 4. The acts and omissions complained of herein occurred in King County,  
14 Washington, and the defendants are residents and citizens of the State of Washington.

15 5. Plaintiff is a resident and citizen of the state of Washington.

16 6. Venue in this Court is proper pursuant to Title 28, United States Code, § 1391.  
17

18 PARTIES  
19

20  
21 7. Plaintiff Joseph L. Gendreau is a citizen of the United States and a citizen and  
22 resident of the state of Washington.

23 8. Defendant City of Mercer Island is a municipal corporation organized under the  
24 laws of the State of Washington. Defendant City of Mercer Island is sued directly under  
25 Title 42, United States Code, §1983 as to the federal claims, and under the doctrine of  
26 *respondeat superior* as to the state law claims herein.  
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28

11. Defendant Robb Kramp is sued in his individual capacity and in his official capacity as an agent and employee of defendant City of Mercer Island.

A. Trespass on the Gendreau property

14. The blocking of the Gendreau driveway was unreasonable under the circumstances.

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1           16.     Mercer Island police officer Hyderkhan arrived at the scene. He advised Ms.  
2     Forschler and Mr. Li that they could not park in Claimant's driveway.

3           17.     Ms Forschler and Mr. Li left the Gendreau driveway.  
4

5  
6     B.     Arrest Without Probable Cause

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8           18.     Later that day, Ms. Forschler contacted the Mercer Island police and asserted  
9     that plaintiff had taken some papers from her.

10          19.     Defendant Kramp contacted plaintiff by telephone. Plaintiff denied taking  
11     papers from Ms Forschler.

12          20.     Plaintiff advised defendant Kramp that Ms. Forschler had left papers on his  
13     property.  
14

15          21.     Plaintiff offered to bring the papers to the Mercer Island police station.

16          22.     Plaintiff brought the papers to the police station and gave them to defendant  
17     Kramp.  
18

19          23.     After plaintiff arrived at the police station, Defendant Kramp arrested plaintiff  
20     for "Assault and Battery".

21          24.     Ms. Forschler told defendant Kramp that plaintiff had never physically harmed  
22     her, nor had he threatened to harm her.

23          25.     The arrest of plaintiff was without probable cause.  
24

25          26.     The arrest of plaintiff herein was unreasonable under the circumstances.  
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27  
28

C.. The Aftermath of the Arrest

27. As a result of the arrest, plaintiff was handcuffed, booked and fingerprinted at the Mercer Island police station.

28. Plaintiff was charged with assault in the Mercer Island Municipal Court.

29. Plaintiff retained private counsel to represent him in the matter.

30. The charge was dismissed.

D. Ratification

31. At the time of the events referred to in this complaint, Ed Holmes was the Chief of the Mercer Island Police Department.

32. Chief Holmes reviewed the actions of the officers, after the fact.

33. Chief Holmes approved of the actions of the officers in this matter.

D. Damages

34. As a proximate cause of the acts and omissions of defendants, plaintiff, a doctor, suffered personal injuries, including, but not limited to, loss of liberty, emotional distress, economic loss, and other consequential damages.

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36. The acts and omissions of defendants herein were done under color of state law, custom or usage.

38. Plaintiff Joseph Gendreau had a federally-protected right, under the Fourth Amendment, not to be subjected to an unreasonable seizure.

40. As a proximate result of the acts and omissions of defendants and deprivation of plaintiff's' Fourth Amendment rights, plaintiff suffered personal injuries as set forth hereinabove.

41. Plaintiff hereby incorporates and re-alleges, as if fully set forth herein, each and every allegation of paragraphs 1 through 40.

42. The acts and omissions of defendants herein were performed under color of state law, custom or usage.

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1           43.     Joseph Gendreau was arrested, for purposes of the Fourth Amendment, when he  
2 was seized, handcuffed, and taken into custody.

3           44.     Joseph Gendreau had a federally-protected right, under the Fourth Amendment,  
4 not to be arrested by defendants without probable cause.

5           45.     The defendants lacked probable cause to arrest Joseph Gendreau.

6           46.     The acts and omissions of defendants herein, and each of them, proximately  
7 caused the deprivation of Joseph Gendreau's Fourth Amendment rights.

8           47.     As a proximate result of the acts and omissions of defendants and deprivation of  
9 plaintiff's Fourth Amendment rights, plaintiff suffered personal injuries as set forth  
10 hereinabove.

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13                               THIRD CAUSE OF ACTION:  
14                               MUNICIPAL LIABILITY OF THE CITY OF MERCER ISLAND

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16           48.     Plaintiff hereby incorporates and re-alleges, as though fully set forth herein,  
17 each and every allegation of paragraphs 1 through 47.

18           49.     At all times material to this complaint, defendant City of Mercer Island, by and  
19 through its chief of police, had in effect certain explicit and *de facto* policies, practices and  
20 customs which were applied to the detention and arrest of Joseph Gendreau.

21           50.     For purposes of the incident described herein, it was the policy, custom and  
22 practice of the City of Mercer Island to arrest and detain the plaintiff without probable cause  
23 in violation of his Fourth Amendment rights as set forth hereinabove.

24           51.     It was further the policy of the City of Mercer Island, by and through its chief of  
25 police, to approve, acquiesce, condone and ratify the unreasonable seizure and detention of  
26

1 the plaintiff in the incident described hereinabove, in violation of his Fourth Amendment  
2 rights.

3 52. The policy, practice and custom of approving, acquiescing in, condoning and/or  
4 ratifying the unreasonable seizure and detention of the plaintiff in the incident described  
5 herein, in violation of his Fourth Amendment rights, was a deliberate choice by defendant  
6 City of Mercer Island, by and through its chief of police.

7 53. For purposes of liability for said policies, practices and/or customs, the chief of  
8 police was the authorized policy-maker on police matters, and his decisions, explicit and *de*  
9 *facto*, were and are binding on defendant City of Mercer Island. The police chief is not  
10 named as a defendant in this lawsuit at this time.

11 54. These policies, practices and customs were maintained with deliberate, reckless  
12 and/or callous indifference to the constitutional rights of the plaintiff as set forth hereinabove.

13 55. The above-described policies, practices and customs of defendant City of  
14 Mercer Island proximately caused the deprivation of the Fourth Amendment rights of the  
15 plaintiff.

16 56. As a proximate result of the above-described policies, practices and customs of  
17 defendant City of Mercer Island and as a result of the deprivation of plaintiff's Fourth  
18 Amendment rights, plaintiff suffered personal injuries as set forth hereinabove.

19 FOURTH CAUSE OF ACTION:  
20 ASSAULT AND BATTERY

21 57. Plaintiff hereby incorporates and re-alleges, as if fully set forth herein, each and  
22 every allegation of paragraphs 1 through 56.



1           58. Defendants assaulted and battered plaintiff Joseph Gendreau by arresting him.

2           59. Defendant City of Mercer Island is liable for the actions of the individual  
3 defendant under the doctrine of *respondeat superior*. Defendant Kramp is not being sued  
4 individually in this cause of action at this time.  
5

6           60. As a direct, proximate and foreseeable result of the wrongful actions described  
7 hereinabove, plaintiff has been damaged in an amount in excess of the minimum jurisdiction of  
8 this Court.  
9

10                               FIFTH CAUSE OF ACTION:  
11                               FALSE ARREST/FALSE IMPRISONMENT

12           61. Plaintiff hereby incorporates and re-alleges, as if fully set forth herein, each and  
13 every allegation of paragraphs 1 through 60.  
14

15           62. Defendants arrested and detained plaintiff Joseph Gendreau without probable  
16 cause.  
17

18           63. Defendant City of Mercer Island is liable for the actions of the individual  
19 defendant under the doctrine of *respondeat superior*. Defendant Kramp is not being sued  
20 individually in this cause of action at this time.

21           64. As a direct, proximate and foreseeable result of the wrongful actions described  
22 hereinabove, plaintiff has been damaged in an amount in excess of the minimum jurisdiction  
23 of this Court.  
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SIXTH CAUSE OF ACTION:  
PROSECUTION WITHOUT PROBABLE CAUSE/  
MALICIOUS PROSECUTION IN VIOLATION OF  
THE FOURTH AMENDMENT

65. Plaintiff hereby incorporates and re-alleges, as if fully set forth herein, each and every allegation of paragraphs 1 through 64.

66. The acts and omissions of defendants herein were done under color of state law, custom, or usage.

67. Defendants instituted a criminal action against the plaintiff.

68. The prosecution ended in the plaintiff's favor on or about December 15, 2009.

69. The criminal proceeding was initiated without probable cause.

70. Plaintiff had a federally-protected right, under the Fourth and Fourteenth Amendments to the United States Constitution, not to be subjected to prosecution without probable cause.

71. The acts and omissions of defendants herein proximately caused the deprivation of plaintiff's Fourth and Fourteenth Amendment rights.

72. As a proximate result of the acts and omissions of defendants and deprivation of his Fourth and Fourteenth Amendment rights, plaintiff suffered personal injuries as set forth hereinabove.

SEVENTH CAUSE OF ACTION:  
MALICIOUS PROSECUTION UNDER STATE LAW

73. Plaintiff hereby incorporates and re-alleges, as if fully set forth herein, each and every allegation of paragraphs 1 through 72.

74. The acts and omissions of defendants herein were done under color of state law, custom, or usage.

75. Defendants instituted a criminal action against the plaintiffs.

76. The prosecution ended in the plaintiff's favor on or about December 15, 2009

77. The criminal proceeding was initiated without probable cause.

78. Defendants acted maliciously.

79. Defendant City of Mercer Island is liable for the actions of the individual defendant under the doctrine of *respondeat superior*. Defendant Kramp is not being sued individually in this cause of action at this time.

80. As a proximate result of the acts and omissions of defendants, plaintiff Joseph Gendreau suffered personal injuries as set forth hereinabove.

PUNITIVE DAMAGES ALLEGATIONS

81. Plaintiff hereby incorporates and re-alleges, as if fully set forth herein, each and every allegation of paragraphs 1 through 80.

1           82.     The acts and omissions of defendant Kramp herein were motivated by evil motive  
2 or intent, or involved reckless or callous indifference to the constitutional rights of the plaintiff as  
3 set forth hereinabove.  
4

5           83.     Defendant City of Mercer Island should indemnify defendant Kramp for any  
6 damages awarded against him at the trial of this action, including punitive damages.  
7

8  
9                               JOINT AND SEVERAL LIABILITY

10           84.     The City of Mercer Island is responsible for the fault of the individual defendant  
11 because the individual defendant was acting as an agent or servant of the City of Mercer Island.  
12 The City of Mercer Island is liable for all damages awarded against the individual defendant,  
13 including punitive damages. RCW 4.22.070(1)(a).  
14

15           85.     Since plaintiff is fault-free, the City of Mercer Island is jointly and severally liable  
16 for all damages awarded, including punitive damages. RCW 4.22.070(1)(b).  
17

18                               PRAYER FOR RELIEF  
19

20           WHEREFORE, plaintiff prays for relief as follows:  
21

22           Compensatory Damages: The defendants should be required to pay compensatory  
23 damages in an amount to be proven at trial.

24           Punitive Damages: The defendants should be required to pay punitive damages in an  
25 amount to be proven at trial pursuant to Title 42, United States Code, § 1983; Title 42,  
26 United States Code, § 1988; RCW 4.22.070(1)(a); and RCW 4.22.070(1)(b).  
27

1        Attorneys' Fees: The defendants should be required to pay the plaintiff's reasonable  
2 attorneys' fees and costs pursuant to Title 42, United States Code, § 1988.

3        Other Relief: The Court should grant the plaintiff such other and further relief as the  
4 Court deems just and equitable.  
5

6        DATED this the 19th day of August, 2011.

7  
8                                Respectfully submitted,

9                                MUENSTER & KOENIG  
10

11  
12                                By: S/John R. Muenster

13                                JOHN R. MUENSTER  
14                                WSBA No. 6237  
15                                Attorney at Law  
16                                Of Attorneys for Joseph L. Gendreau  
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